

Facts about HIPAA – Pre-existing Conditions

The Health Insurance Portability and Accountability Act (HIPAA), was signed into law on August 21, 1996, and provides certain protections for people who have pre-existing medical conditions.

HIPAA includes provisions that:

- limit exclusion periods for pre-existing conditions;
- prohibit discrimination against employees and dependents based on their health status; and
- guarantee renewability and availability of health coverage to certain employees and individuals.

Pre-existing Conditions

HIPAA limits the time you can be denied coverage for a pre-existing condition under your employer's health insurance plan. Under HIPAA, an employer health insurance plan can deny coverage for a pre-existing condition only if the employee or dependent is diagnosed, receives care or treatment, or has care or treatment recommended in the 6 months before the *enrollment* date. Note: Pregnancy cannot be denied as a pre-existing condition. In addition, pre-existing conditions cannot be applied to newborns; adopted children under age 18; or a child under age 18 placed for adoption, as long as the child becomes covered under the health plan within 30 days of birth, adoption, or placement for adoption, and provided the child does not incur a subsequent 63-day or longer break in coverage.

The length of time coverage can be denied for a pre-existing condition under HIPAA is limited to no longer than 12 months (18 months if you are a late enrollee). This time can be reduced or eliminated if you were covered by previous health insurance (which qualifies under HIPAA as creditable coverage) and if there was not a break in coverage between the plans of more than 63 days.

Whenever you obtain health insurance coverage through an employer group, you should submit a "Certificate of Creditable Coverage" for each plan under which you were previously covered. Creditable coverage includes most health coverage's, including COBRA, a health insurance

policy or an HMO, Medicaid, Medicare, the Indian Health Service, TRICARE, the Peace Corps, a state high-risk pool or a state or local government public health plan. A "Certificate of Creditable Coverage" must be provided automatically to you when you lose coverage under the plan or otherwise become entitled to elect COBRA continuation of coverage as well as when COBRA continuation coverage ceases. You may also request a certificate, free of charge, until 24 months after the time your coverage ended. For example, you may request a certificate of coverage even before your coverage ends.

The new plan will give you credit for the time you were covered under previous health plans so that if you had at least 12 months of creditable coverage without a significant break (63 days or more in a row), no pre-existing condition exclusion can be applied to your new coverage.

Example 1: You were covered by an employer group plan for two years before leaving your job. You acquired coverage under your new employer's group plan; however, there was a break between the two plans of 45 days during which you had no health insurance. Since the break in coverage did not exceed 63 days, the new insurer must credit you for two years of coverage and cannot apply a pre-existing condition limitation.

Example 2: You were covered by an employer group for 7 months before leaving your job. You acquired new coverage under your new employer within ten days of losing your old plan. The new plan must credit 7 months to the pre-existing condition limitation, leaving you a maximum of 5 months during which those conditions may be limited or denied.

Example 3: You were covered by an employer group for three years, at which time you lost your job and insurance coverage. You did not get a new job or insurance until 6 months later. Since you had a break in coverage that exceeded 63 days, preexisting condition limitations may be applied under the new plan.

Renewability of Individual Health Insurance

At your option, individual health coverage must be renewed or continued in force. However, your individual health coverage may not be renewed or may be discontinued because you failed to pay premiums, committed fraud, terminated the policy, moved outside the service area, or ended membership in a bona fide association (if you terminated your membership in an association that is not bona fide, your health insurance coverage cannot be terminated because your membership terminated).

Protections Provided when Changing Jobs

As stated earlier, pre-existing condition exclusion periods are now limited under the HIPAA law. This allows workers to change jobs without being penalized for pre-existing health conditions by their new employer sponsored health insurance plan. When you change jobs, you must be allowed to enroll in the employer sponsored health plan, regardless of your health conditions, if you enroll when first eligible.

It is important to note that HIPAA does not require employers to offer health insurance to employees. Your new employer may not provide health insurance coverage at all, or the benefits may differ from your previous employer's plan.

Your new employer may have a waiting period before benefits begin; however, this waiting period is not considered a break in coverage when determining continuous coverage.

The cost of health insurance may also vary from employer to employer. HIPAA does not set any cost guidelines for premiums. However, you cannot be charged more than other members of your group because of your health conditions.

Special Enrollment

Insurers are required to provide for special enrollment periods during which certain individuals are allowed to enroll in the plan even if they did not enroll when first eligible. Pre-existing condition exclusions may apply to those individuals.

If you did not enroll in your employer's health plan when you were first eligible because you were covered under other insurance, you may enroll under a special enrollment period if you lose the other coverage. You and your eligible dependents must be allowed to enroll if you apply within thirty days after loss of the other coverage.

You may also enroll under a special enrollment period if you get married, have a baby, adopt a child or have a child placed with you for adoption. You, your spouse, and your dependent (through birth, adoption or placement for adoption) may be added to coverage under special enrollment if you apply within thirty days of the marriage, birth, adoption or placement for adoption.

A special enrollee may not be treated as a late enrollee. Therefore, the maximum pre-existing condition exclusion period that may be applied to a special enrollee is 12 months, and the 12 months are reduced by the special enrollee's prior creditable coverage.

For More Information

Call the New Hampshire Insurance Department at (603) 271-2261 or (800) 852-3416 or the U.S. Department of Labor at (617) 565-9600.

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